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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MADELINE SCHRAGER,

Plaintiff and Appellant,

v.

AINSLEY CARRY et al.,

Defendants and Respondents.

B282970

(Los Angeles County  
Super. Ct. No. BS160421)

APPEAL from a judgment of the Superior Court of Los Angeles County, Howard L. Halm, Judge. Affirmed.

Worksman Jackson Hathaway & Quinn, Mark M. Hathaway, Mark W. Allen, Jenna E. Eyrich; Hathaway Parker, Mark M. Hathaway and Jenna E. Parker for Plaintiff and Appellant.

Cole Pedroza, Kenneth R. Pedroza, Matthew S. Levinson; Law Offices of Denise Ann Nardi and Denise Ann Nardi for Defendants and Respondents.

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Madeline Schrager (Schrager) had prohibited notes openly displayed in front of her while she was taking her chemistry final exam at the University of Southern California (USC). Based on USC's Student Conduct Code prohibiting "possession or use of unauthorized notes" during an examination, she received an F in the class after going through USC's administrative process. She then petitioned the trial court for a writ of administrative mandamus, claiming that USC denied her a fair hearing and that there was insufficient evidence to support the sanction. The trial court denied the petition, and Schrager appeals. We affirm the judgment.

## **BACKGROUND**

### **I. The incident**

In the spring semester of 2015, Schrager was in Professor Thomas Bertolini's chemistry class at USC. Concerned about the large number of academic dishonesty incidents in the class, the professor warned his students that notes of any kind were prohibited while taking the final exam. The professor was not in the room on the day of the exam, but, per his instructions, a proctor told students, "consulting any extraneous course-related material" or "having extraneous course-related material in your field of vision *for any reason*" would "result in a grade of F for this class and academic probation." This admonition was also written on the examination. The professor modeled his instruction on USC's Student Conduct Code section 11.13A (section 11.13A) prohibiting "possession or use of unauthorized notes" during exams.

Despite these warnings, Schrager's chemistry notes were visible during the examination. Emily Roberts, a teaching assistant, saw a yellow notepad with course-related material on it

sticking out of Schrager's large bag, which was in front of Schrager on the floor. Roberts tapped Schrager on the shoulder and, after taking a picture of Schrager and the notepad, confiscated the notepad and gave it and the picture to Professor Bertolini. In an email to the professor, Roberts said that Schrager did not look at the notepad, "from what we could tell" before it was confiscated.

## II. The investigation and USC's process

The day after the test, Professor Bertolini informed the university body charged with evaluating student conduct, Student Judicial Affairs and Community Standards (SJACS), he believed that Schrager violated section 11.13A by possessing or using unauthorized notes. In his letter of complaint, he explained that, other than a notation of "[r]unning [c]lothes," Schrager's notes were material to the exam. He included the photograph Roberts had taken, and he gave a detailed explanation of how the notes would have helped Schrager on the exam. In conclusion, the professor asked that Schrager "be given an F in [his] class for her possession of these notes. Given the photograph by Ms. Roberts (the TA) and the content of the notepad, [Schrager] is in no position to argue that she did not have access to relevant course-related material during [his] final exam."

SJACS informed Schrager that Professor Bertolini had filed a complaint of academic dishonesty against her and that the proposed sanction was an F in the class. SJACS told Schrager that the complaint alleged she violated section 11.13A<sup>1</sup> and quoted that

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<sup>1</sup> In quoting section 11.13A, the letter indicated that the section was entitled "[c]heating on [e]xams," but it does not appear that the section has a title.

section, as well as Student Conduct Code section 11.21.<sup>2</sup> SJACS further informed Schrager that the complaint concerned the final exam. SJACS also enclosed an academic integrity pamphlet and advised Schrager to contact its office to schedule an appointment.

Schrager took that advice and met with Sarah Ruelas, the SJACS judicial officer assigned to review the matter. Schrager told Ruelas that she had studied in the library before the exam, and when she entered the exam room she closed her bag, which contained the notepad. She did not know her notes had become visible but speculated that she must have accidentally knocked her bag open. When the teaching assistant tapped her on the shoulder, she was confused as to why.

Soon thereafter, SJACS issued its decision, entitled summary administrative review, and found that Schrager violated sections 11.13A and 11.21. The university assigned an F to Schrager for Chem 322A and required her to complete an academic integrity tutorial. The review concluded that regardless of Schrager's intentions, she "was in possession of a notepad with written course-related material that was both clearly accessible and visible during the examination."

As permitted by the Student Conduct Code, Schrager submitted an appeal on the grounds she had new evidence, the sanction was inappropriate or excessive, and the administrative review panel failed to follow the university's rules and regulations. (See generally USC Student Conduct Code, § 15 et seq.) The new evidence was Professor Bertolini's previously undisclosed email exchange with Roberts, who said Schrager did not look at the

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<sup>2</sup> "Any act that gains or is intended to gain an unfair academic advantage may be considered an act of academic dishonesty."

notepad “from what we could tell”; photographs which Schrager claimed showed the notes were not in her line of sight; a letter from Schrager’s optometrist stating she cannot see distance with her reading glasses; and letters of reference attesting to Schrager’s integrity and reputation. Schrager also complained that evidence had not been made available to her: additional photographs Roberts took; the complete email exchange between the professor and his teaching assistants; Schrager’s midterm exams and grades to show she maintained an above average grade; her final exam; and Roberts’s and the professor’s responses to questions Schrager had posed to them. Further, Schrager argued that Ruelas failed to follow USC’s rules and regulations by basing her decision on the professor’s complaint alone and failing to conduct any investigation.

Professor Bertolini responded to that appeal by pointing out that Schrager admitted she possessed visible notes, and based on that admission, “[s]he deserves an F as per USC policy.” He reiterated that the “word by which [he] based [his] complaint against . . . Schrager is **possession**. [He didn’t] need, nor did [he] attempt in [his] original complaint to prove [she] used or planned to use the notes that were visible to her.”

The appeals panel upheld the administrative review panel’s decision. The panel found that Schrager did not present any new evidence, as the photos and references Schrager submitted were previously available. The sanctions were consistent and appropriate for such an academic integrity violation. Finally, the hearing officer acted “within procedure.”

### III. Schrager’s petition for a writ of mandate

Having exhausted her remedies at USC, Schrager petitioned for a writ of administrative mandate in the superior court under

Code of Civil Procedure section 1094.5.<sup>3</sup> In her amended petition, Schrager contended that the university failed to give her a fair hearing and that substantial evidence did not support its decision.

The trial court denied the petition. It found that Schrager received a fair trial, in that she received all documents she was entitled to review, namely Professor Bertolini's written complaint. Also, USC adequately investigated the allegations against Schrager, and the university did not have to interview Roberts because her testimony was irrelevant to the undisputed issue of whether Schrager possessed the notes. Related to that undisputed issue, the court found that section 11.13A unambiguously forbids mere possession of notes and that Schrager fully understood that this was the allegation against her. Finally, as to the argument there was insufficient evidence to support USC's decision, the photograph established that Schrager possessed unauthorized notes. The university did not have to establish she intended to *use* them.

This appeal on the same grounds followed.

## DISCUSSION

### I. Standard of review

An aggrieved party to an administrative proceeding may seek judicial review of any final "order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal" and private organizations such as universities that provide for a formal

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<sup>3</sup> In addition to USC, Schrager named Ainsley Carry, USC's vice-president for student affairs, as a respondent.

evidentiary hearing. (Code Civ. Proc., § 1094.5, subd. (a); *Gupta v. Stanford University* (2004) 124 Cal.App.4th 407, 411.) “The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (Code Civ. Proc., § 1094.5, subd. (b).) “The scope of our review from a judgment on a petition for writ of mandate is the same as that of the trial court.” (*Doe v. University of Southern California* (2016) 246 Cal.App.4th 221, 239 (*Doe*).) We review the ultimate determination of procedural fairness de novo. (*Ibid.*; accord *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482.) We review a challenge to the substantive decision for substantial evidence. (Code Civ. Proc., § 1094.5, subd. (c); *Doe*, at p. 239.)

## II. Schrager received a fair hearing

Schrager complains that USC’s process was unfair because she did not receive sufficient notice of the charges against her and USC’s investigation was deficient.

### A. *Sufficiency of notice*

Schrager’s argument about notice is twofold. First, because section 11.13A is vague and ambiguous, it failed to inform her what conduct is proscribed. Second, even if the section is clear that mere possession of unauthorized notes constitutes academically dishonest behavior, then USC failed to provide Schrager notice that her mere possession of the notes was the issue rather than her intent to use them.

As a matter of constitutional right to due process and the common law right to fair procedure, a person is entitled to notice of the charges against her sufficient to provide a reasonable opportunity to respond. (*Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1445.) USC's Student Conduct Code similarly provides that, in the event of a charge of student misconduct, USC will give written notice "of the incident report that specifies the nature of the alleged violation and the basis for the charge including the date or period of time and location regarding the alleged incident." (USC Student Conduct Code, § 10.30, subd. (I).)

The specific conduct code section at issue is section 11.13A, which provides: "Any use or attempted use of external assistance in the completion of an academic assignment and/or during an examination, or any behavior that defeats the intent of an examination or other classwork or assignment, shall be considered academically dishonest unless expressly permitted by the instructor. The following are examples of unacceptable behaviors: communicating with fellow students during an exam, copying or attempting to copy material from another student's exam; allowing another student to copy from an exam or assignment; possession or use of unauthorized notes, calculator, or other materials during exams and/or unauthorized removal of exam materials."

We interpret section 11.13A in the same manner as we interpret statutes. (See *In re Richards* (1993) 16 Cal.App.4th 93, 97–98 [same rules of construction govern statutes & administrative regulations].) That is, our fundamental task is to determine the Legislature's, or here the university's, intent to effectuate the code's purpose. (*People v. Robinson* (2010) 47 Cal.4th 1104, 1138.) To that end, we begin with the statutory language, giving the words their ordinary and plain meaning, viewing them in context. (*Hsu v.*



*Abbara* (1995) 9 Cal.4th 863, 871; *1550 Laurel Owner's Assn., Inc. v. Appellate Division of Superior Court* (2018) 28 Cal.App.5th 1146, 1151.) A statute's plain meaning controls our interpretation unless its words are ambiguous.

Section 11.13A is unambiguous. It first sets forth a general rule: in short, do not engage in academically dishonest behavior. Then, the section provides examples of the general rule, including do not possess or use unauthorized notes. Possessing *or* using unauthorized notes is in the disjunctive. “[O]r” unaccompanied by any indication that what follows is qualified “indicates an intention to use [or] disjunctively . . . to designate alternative or separate categories.” (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 680; accord *In re Jesusa V.* (2004) 32 Cal.4th 588, 622.) Thus, *possessing* unauthorized notes is academically dishonest behavior. And, *using* unauthorized notes also is academically dishonest behavior.

Schrager, however, attempts to import ambiguity into the section's clear prohibition on possessing unauthorized notes by suggesting that the general rule modifies the examples that follow it. That is, the first sentence's reference to “use or attempted use” modifies the examples that follow. Thus, mere possession of unauthorized notes is not enough: A student must have used or tried to use them for the behavior to be academically dishonest. However, interpreting “[a]ny use or attempted use” to modify “possession or use of unauthorized notes” renders the word “possession” meaningless and superfluous. This interpretation thus contravenes a basic rule of statutory construction requiring us to give meaning to every word in the section, if possible. (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1038.)

Moreover, the first sentence of the section is in the disjunctive, prohibiting any use or attempted use of external assistance *or* any behavior that defeats the intent of an examination. Schrager does not address the second part of the sentence or why her possession of notes cannot be considered “behavior that defeats the intent of an examination,” even if she did not use or intend to use the notes. This is especially pertinent here, where Professor Bertolini told his students not to have “extraneous course-related material in your field of vision *for any reason.*” This instruction could not have been clearer or, in hindsight, more apt.

Schrager alternatively contends that if section 11.13A unambiguously prohibits mere possession of notes, USC failed to give her sufficient notice that her disciplinary proceedings were based on that theory. Rather, she thought the disciplinary action was based on her alleged use or attempted use of the notes. However, Schrager received her professor’s written complaint stating his belief she violated section 11.13A and highlighting that portion of the section referring to “possession or use of unauthorized notes.” He plainly asked she be given an F in his class “for her possession of these notes.” In her reply brief on appeal, Schrager asserts that the version of the report she received from SJACS redacted the professor’s request she get an F for “her possession of these notes.” Even if true, the complaint still gave Schrager sufficient notice of the charges against her. As we have said, the complaint highlighted “possession or use of unauthorized notes” and explained how the notes were meaningful to the exam.

True, the professor’s complaint also described how the notes were visible to Schrager and how they were relevant to the exam, points arguably relevant to any use or attempted use of the notes. Even so, the professor’s explanation of what the notes meant was

relevant to another issue: their unauthorized nature. Had the only notation on the notepad been to “[r]unning clothes” or, for example, to a grocery list, then perhaps Schrager could have argued she did not have *unauthorized* notes. As it was, she had a chemical formula on her notepad. Thus, the professor’s explanation of how the notes were useful to the exam does not undermine the sufficiency of the notice that the charge was possession of the notes. In no way was Schrager’s ability to respond to the charge impeded, and she has made no argument that the formula on her notepad was unrelated to Chem 322A.

This case therefore is not like *Doe, supra*, 246 Cal.App.4th at page 225, where the university’s investigation and report focused on an alleged sexual assault and whether the victim consented to sexual contact; but the student was suspended for something else—encouraging others to slap the victim and for endangering her *after* all sexual contact had ended. Thus, the student was found guilty of something other than that with which he was charged. In contrast, Schrager was found guilty as charged.

Finally, Schrager questions how a rule forbidding mere possession of unauthorized notes furthers the university’s goal of preventing academically dishonest behavior. The simplest answer is this: it is the rule. Such a bright-line rule makes it easier for both USC and its students to understand what is and is not prohibited conduct.

#### B. *Adequacy of the investigation*

A school must follow its own policies and procedures. (*Berman v. Regents of University of California* (2014) 229 Cal.App.4th 1265, 1271.) Schrager argues that USC’s process was unfair because it did not follow its own rules and regulations. Those rules, as set forth in the Student Conduct Code, include

rights to a fair and impartial review and to inspect documents and relevant information. (USC Student Conduct Code, § 10.30, subds. IV & VI.) Here, Schrager complains that Ruelas's review was deficient because she evaluated only the professor's complaint and Schrager's oral account of events and did not interview Roberts or collect "other evidence."

However, the issue before SJACS was discrete: Did Schrager possess unauthorized notes? The professor's report, which included a photograph of Schrager with the notes visibly displayed, and Schrager's own verbal account in which she did not dispute she had the notes, established the code violation. It is unclear what Roberts or the unspecified "other evidence" could have added. That Roberts did not see Schrager look at the notes was irrelevant to whether Schrager possessed them. (Cf. *Doe, supra*, 246 Cal.App.4th at p. 248 [procedure unfair where SJACS relied on information never revealed to student].) Similarly, that Schrager could not see her notes, as her optometrist suggested, is irrelevant to her possession of the notes.

Finally, Schrager urges us to consider the cumulative impact of the way in which USC conducted the disciplinary proceeding. As we have found no unfairness in the process Schrager received, there is no misconduct to accumulate.

### III. Sufficiency of the evidence

Schrager's sufficiency of the evidence argument rests on USC's alleged failure to show she used or attempted to use the notes, intended to do so, or had a motive to do so. There being no fundamental right at stake, the de novo standard of review does not apply. (See *Doe, supra*, 246 Cal.App.4th at pp. 248–249; *Gurfinkel v. Los Angeles Community College Dist.* (1981) 121 Cal.App.3d 1, 5–6 [fundamental right to education does not encompass right to

college education].) Rather, when reviewing a university's disciplinary actions, our power begins and ends with determining whether there is any substantial evidence, contradicted or uncontradicted, to support the finding. (*Ibid.*) As we have said, the university's complaint was based on Schrager's possession of notes. Schrager does not dispute she had the notes. Nor could she, given the photographic evidence. Professor Bertolini explained how the notes were relevant to the final exam; hence, he established their unauthorized nature. There was sufficient evidence Schrager possessed unauthorized notes.

### **DISPOSITION**

The judgment is affirmed. University of Southern California and Ainsley Carry are awarded their costs on appeal.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

LAVIN, Acting P. J.

EGERTON, J.